INTERIOR BOARD OF INDIAN APPEALS

Ruth Hidalgo v. Acting Portland Area Director, Bureau of Indian Affairs

35 IBIA 141 (08/04/2000)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RUTH HIDALGO, Appellant	:	Order Affirming Decision
v.	:	
ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 00-7-A August 4, 2000

This is an appeal from a September 9, 1999, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), continuing a hold on Appellant's Individual Indian Money (IIM) account until $820.42 has been collected and reimbursed to BIA. 1/ For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant is one of 32 owners of Fort Hall Allotment 1708-A. Part of Allotment 1708-A and parts of five other allotments are subject to Fort Hall Lease 98-017, a five-year farming lease under which annual rental payments for trust interests are payable to BIA on December 1 of each year. 2/ Upon receipt of the December 1998 rental payment, BIA staff distributed the funds to the Indian owners of the six allotments. However, in encoding the payments, a clerk transposed the payments due to the owners of Allotment 1708-A (a total of $86.24) with the payments due to the owners of Allotment 1577 (a total of $14,548.10). This error resulted in substantial overpayments to the owners of Allotment 1708-A and substantial underpayments to the owners of Allotment 1577. Appellant, who should have received a payment of $5.00 for her interest in Allotment 1708-A, instead received a payment of $825.42.

BIA discovered the error in early January 1999. On January 6, 1999, the Superintendent sent notice of the error to Appellant, as well as the other owners of Allotment 1708-A, stating in part:

1/ The Area Director's decision indicated that funds sufficient to repay the debt were expected to be deposited into Appellant's IIM account by December 1999. By order dated Oct. 13, 1999, the Board authorized the Superintendent, Fort Hall Agency, BIA, to release to Appellant any funds exceeding the disputed amount.

2/ Rental for nontrust interests is payable directly to the interest owners.

There are two methods that can be used to correct the error and they are:

1. If you have not cashed the check or spent the money, please return the check to the Bureau of Indian Affairs, right away. You will be receipted to reflect this repayment from you.

2. For the remainder of 1999 the BIA will hold your trust income until this total amount is repaid. IIM will place a hold on your IIM account until this overpayment is collected by the BIA.

On January 15, 1999, the Superintendent notified Appellant that a hold had been placed on her IIM account and informed her of her right to request a hearing under 25 C.F.R. § 115.10. He also sent her a bill for collection in the amount of $820.42.

Appellant requested a hearing. 3/ A hearing was held before the Superintendent on February 16, 1999. On February 25, 1999, the Superintendent issued a decision stating that the hold on Appellant's IIM account would remain in place until the overpaid amount was collected.

Appellant appealed the Superintendent's decision to the Area Director. On September 9, 1999, the Area Director affirmed the Superintendent's decision. Appellant then appealed to the Board.

Before the Board, Appellant makes the same arguments she made before the Area Director. She contends: "[T]he Interior Department is the trustee of the monies in the IIM accounts and must be held responsible for their mistakes. I am not a delinquent account holder." Notice of Appeal at 1. She also cites Comptroller General's Decision B-219235, 65 Comp. Gen. 533 (1986), contending that it held that "disbursements made in error cannot be recovered if the funds have been distributed and are no longer held in trust." Id. at 2.

There is no doubt that BIA bears a trust responsibility for funds in IIM accounts. There is also no doubt that BIA erred in this case by depositing funds belonging to other landowners into Appellant's IIM account. The Area Director conceded the error, stating in his decision: "It is clear that BIA is responsible for the mistake. This is exactly why BIA is attempting to collect the amount you were overpaid." Area Director's Decision at 2.

While BIA's trust duty with respect to funds in an IIM account is normally toward the account holder only, Shoshone-Bannock Tribal Credit Program v. Portland Area Director, 35 IBIA 110, 120 (2000), in this case the funds erroneously deposited into Appellant's ac-

---

3/ The record indicates that one other landowner requested a hearing under sec. 115.10. That landowner's objection has apparently been resolved, as it did not result in an appeal to the Board.

count were the property of other trust beneficiaries. BIA owed a trust duty to them as well. With respect to the $820.42 erroneously deposited into Appellant's IIM account, BIA's trust duty was toward the rightful owners of those funds. BIA was acting in furtherance of its trust obligations when it undertook to correct its error. The fact that BIA has a trust responsibility for funds in IIM accounts, and a trust duty toward Appellant, does not deprive BIA of the authority to correct its error or relieve Appellant of the obligation to repay the amount she was overpaid.

Appellant also contends that she is not a delinquent account holder. Although she does not elaborate on this argument, she apparently takes the position that BIA cannot recover from her unless she is a delinquent account holder.

In response to a similar argument she made before him, the Area Director stated:

> [W]hile you did not create the indebtedness by your own volition, we find that you are indeed a delinquent account holder. You were overpaid $820.42. Although the mistake is the Interior Department's, BIA has authority to correct the mistake according to 25 C.F.R. § 115.9 which states the following:
>
> > Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies.

Area Director's Decision at 2.

It is clear that Appellant owes a debt of $820.42 to BIA, an agency of the United States. 4/ BIA's claim against Appellant was perhaps not "delinquent" in the usual sense. Arguably, the Superintendent should have specified a payment due date, so that a failure to pay by that date would establish a technical "delinquency." However, in this case, the extra step would merely have caused delay, possibly increasing Appellant's indebtedness to BIA. 5/ In the particular circumstances of this case, and in light of the fact that BIA's prompt action worked to the benefit of Appellant, the Board finds that Appellant's debt to BIA became delinquent for purposes of 25 C.F.R. § 115.9 when she did not repay the overpaid amount after notice from the Superintendent.

4/ BIA used program funds to make up the shortfalls in the payments to the owners of Allotment 1577. At that point, the overpaid owners of Allotment 1708-A became indebted to BIA itself, rather than BIA as trustee for the owners of Allotment 1577.

5/ Federal agencies are required by law to collect interest on debts owed to the United States. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

As noted above, Appellant cites Comptroller General's Decision B-219235 as supportive of her position. That decision was issued in response to an inquiry from BIA concerning BIA's recovery of funds which had been erroneously deposited into two IIM accounts as a result of an incorrect probate order.

The Comptroller General found that, by statute, regulation, and Board precedent, 6/ "the Secretary of the Interior is authorized to waive use of IIM account monies to satisfy indebtedness of Indians to the United States." 65 Comp. Gen. 538. He observed that "the Interior Department policy in effect at the time the overpayments * * * were recovered was that distribution under a legal probate order should stand, and recoveries of overpayments could only be effected through transfers of funds remaining in IIM accounts from the original distributions." Id. 7/ Based upon the statutory and regulatory authority granted to the Secretary, and the Interior Department policy enunciated pursuant to that authority, the Comptroller General found that BIA should not have recovered the funds erroneously paid into one of the two IIM accounts because there were no longer any funds from the original distribution in the account. 8/

Appellant clearly misconstrues the Comptroller General's Decision. For one thing, she mistakes the Comptroller General's description of Interior policy for a holding by the Comptroller General. Moreover, she omits the critical fact that the 1960 policy statement concerned

---

6/ The Comptroller General cited 25 U.S.C. § 410, 25 C.F.R. § 115.9, and United States v. Acting Aberdeen Area Director and Mossette, 9 IBIA 151, 89 I.D. 49 (1982).

25 U.S.C. § 410 provides:

"No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior."

25 C.F.R. § 115.9 provides, in relevant part: "Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies * * * unless such payments are prohibited by acts of Congress."

In Mossette, the Board affirmed two BIA decisions to deny setoffs sought by the United States against the funds in certain IIM accounts. The Board found in that case that BIA had reasonably balanced its dual obligations (duty to collect debts owed to the United States vs. trust responsibility) when it denied the setoffs.

7/ The policy statement to which the Comptroller General referred was issued by the Deputy Commissioner of Indian Affairs on Jan. 6, 1960.

8/ As to the other account, the Comptroller General found that BIA properly recovered the overpaid amount, plus accrued interest, because the original funds were still in the account.

funds deposited into an IIM account as the result of an incorrect probate order. It is evident that neither the Comptroller General's Decision nor the Interior policy on which it was based is directly applicable to the facts of this case.

The Board discussed the Comptroller General's Decision and the 1960 policy statement in Robinson v. Acting Billings Area Director, 20 IBIA 168 (1991), a case which concerned the question whether BIA should recover funds in the amount of $27,786.41 which had been erroneously paid into an IIM account because of the incorrect recording of a probate order. Pursuant to a special grant of authority from the Assistant Secretary - Indian Affairs under 43 C.F.R. § 4.330(b), the Board undertook to review BIA's exercise of discretionary authority. 9/ Guided by the 1960 policy statement and the principles enunciated in the Comptroller General's Decision, 10/ the Board found it appropriate to consider, "not only the trust responsibility, but also equitable considerations, including the initial and continued violation of [Robinson's] due process rights, the extensive length of time her account [had] been subject to the hold, and the financial hardships the hold [had] caused [Robinson] and her family." 20 IBIA at 174-75. Taking all these considerations into account, the Board found that BIA should not recover the overpayment to Robinson.

As was recognized by the Comptroller General in Decision B-219235, by the Board in Robinson, and by the Area Director in his September 9, 1999, decision in this case, a BIA decision to waive use of IIM account monies to satisfy indebtedness of Indians to the United States is a decision based on the exercise of discretion. Absent a special grant of authority, such as occurred in Robinson, the Board's authority to review BIA discretionary decisions is limited.

Because there has been no special grant of authority in this case, the Board employs its usual standard of review for BIA discretionary decisions. Under that standard, the Board does not substitute its judgment for BIA's but reviews the BIA decision to ensure that all legal prerequisites to the exercise of discretion have been satisfied. E.g., Pawnee v. Acting Anadarko Area Director, 32 IBIA 273, 274 (1998).

In this case, the Superintendent complied with the legal requirements in 25 C.F.R. § 115.10 for placing a hold on an IIM account. Thus, unlike the appellant in Robinson, and unlike the IIM account holders who were the subject of Comptroller General's Decision

---

9/ 43 C.F.R. § 4.330(b) provides: "Except as otherwise permitted by the Secretary or the Assistant Secretary))Indian Affairs by special delegation or request, the Board shall not adjudicate: * * * (2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority."

10/ Even in Robinson, the 1960 policy statement and the Comptroller General's Decision were not precisely on point. See 20 IBIA at 174. Those authorities were more relevant to the facts in Robinson, however, than they are to the facts in this case.

B-219235, Appellant suffered no due process violation. Further, the Superintendent notified her promptly of the BIA error and acted promptly to correct it, thereby protecting her from becoming further indebted through the accrual of interest.

An appellant who challenges a BIA discretionary decision must show that the BIA official did not properly exercise discretion. E.g., Cox v. Acting Muskogee Area Director, 35 IBIA 43, 46 (2000). Appellant has not made such a showing in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's September 9, 1999, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge